UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In Re:		CASE NO. 04-43755 NCD
Denise Darsell Day		CASE NO. 04-43/55 NCD
SSN XXX-XX-6129		
		CHAPTER 13 CASE
	Debtor.	

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

- 1. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
- 2. The Court will hold a hearing on this objection at 10:30 a.m. on September 2, 2004, before the Honorable Nancy C. Dreher in Courtroom 7 West at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.
- 3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on September 1, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 30, 2004, which is three days before the time set for the hearing. UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.
- 4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed July 7, 2004. The case is now pending before this Court.
 - 5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

- 6. Debtor is indebted to Secured Creditor in the principal amount of \$276,250.00, as evidenced by that certain Promissory Note dated August 29, 2000, together with interest thereon.
- 7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated August 29, 2000, executed by Denise D. Day, a single woman, recorded December 13, 2000, as Document No. 279447, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".
- 8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).
- 9. Said plan is also objected to on the basis that Debtor is delinquent in her pre-petition monthly mortgage payments to Secured Creditor for the months of January, 2004 through July, 2004, in the total amount of \$38,304.45, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 40 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).
- 10. The value of the property as scheduled by Debtor is \$315,000.00 subject to Secured Creditor's mortgage in excess of \$325,640.37.
 - 11. The plan, as proposed, is not made in good faith by Debtor.

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12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 24th day of August, 2004.

WILFORD & GESKE

By _/e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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Document No.

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UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In Re:		CHAPTED 12 CASE
Danica Darcall Day		CHAPTER 13 CASE
Denise Darsell Day SSN XXX-XX-6129		
33N AAA-AA-0129		CASE NO. 04-43755 NCD
	Debtor.	UNSWORN DECLARATION
		FOR PROOF OF SERVICE
2004, I served the annexed No Confirmation of Plan to each	otice of Objection to person referenced be postage prepaid and	0, Woodbury, Minnesota, declares that on August 24, Confirmation of Plan and proposed Order Denying low, a copy thereof by enclosing the same in an depositing the same in the post office at Woodbury,
Denise D. Day		Jasmine Z. Keller
301 Bluff Road		12 South 6th Street, Suite 310
Carver, MN 55315		Minneapolis, MN 55402
Paul E. Ross		U.S. Trustee
Ross & Norton		1015 U.S. Courthouse
287 Marschall Rd Ste 203-A		300 South 4th Street
Shakopee, MN 55379		Minneapolis, MN 55415
And I declare, under	penalty of perjury, th	nat the foregoing is true and correct.
Dated this 24th day of Au	<u>igust</u> , 2004.	
	<u>/e/ Dian</u> Diana W	na Waletzko Valetzko

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In Re:	ORDER DENYING CONFIRMATION OF PLAN
Denise Darsell Day SSN XXX-XX-6129	OF ILAN
Debtor.	CASE NO. 04-43755 NCD
This Chapter 13 Case came on before	ore the Court on September 2, 2004, for hearing on Debtor's
plan of debt adjustment. Appearances were	as noted in the record. Upon the record made at hearing,
and all other files and records in this case,	
IT IS HEREBY ORDERED that co	nfirmation of Debtor's plan of debt adjustment, as filed
August 17, 2004, is denied.	
Dated:	
Jι	udge of Bankruptcy Court